RESPONSE

I. Status of the Claims

Prior to the second Action, claims 4-9, 23-27, 41 and 49-88 were pending and have been examined in pertinent part. Presently, claims 4-6, 24, 55, 56, 59, 60, 68, 70-81, 84, 85, 87 and 88 have been amended without prejudice or disclaimer. No claims have been canceled or added.

Claims 4-9, 23-27, 41 and 49-88 are therefore pending in the case. According to 37 C.F.R. § 1.121(c), a copy of the pending claims is provided in the amendment section.

II. Interviews and Applicants' Interview Summaries

After review of the fourth Action, Applicants' representative, Shelley Fussey, telephoned Examiner Fetterolf to request a telephone interview, to which Examiner Fetterolf kindly agreed. Applicants appreciate Examiner Fetterolf's participation in a series of interviews, which has resulted in agreement on all issues and allowance for all claims.

Applicants' interview summaries for the telephone interviews were submitted via facsimile on December 12, 2006.

After the December 12, 2006 facsimile, the only remaining issue was whether Applicants should respond to the outstanding, but modified fourth Action, or whether the Office would vacate the fourth Action in favor of a new Action. In a further exchange of telephone messages, Examiner Fetterolf indicated that Applicants should respond to the outstanding, but modified fourth Action, to which Applicants' representative agreed.

The present response implements the agreement reached during the telephone interviews. Accordingly, the restriction requirement at page 2 of the fourth Action is clearly documented on the record, the restricted subject matter is removed by amendment, the restricted claims are not subject to rejection, the rejections of all claims drawn to the elected subject matter are overcome and all claims are therefore in condition for allowance.

III. Entry of Amendments

The present amendments are to be properly entered and considered after final rejection as the amendments confirm allowance of all claims and implement the agreement reached during a series of interviews.

IV. Restriction Entered

As evident in the fourth Action at page 2, and documented in Applicants' interview summaries of December 12, 2006, the Office finds the recently amended claims to contain two separately patentable inventions, *i.e.*, antibodies that bind to the aminophospholipid portion of an aminophospholipid-protein complex *versus* antibodies that bind to the protein portion of an aminophospholipid-protein complex.

The restriction requirement at page 2 of the fourth Action is now further documented on the record.

As documented in Applicants' interview summaries of December 12, 2006, agreement was also reached that the new matter and written description rejections in the fourth Action, which apply only to the separately patentable invention, will be vacated/withdrawn.

V. Support for the Claims

Support for the revised claims is to be found throughout the specification and claims of the original and parent applications. Although no fees should be due, any small entity fees deemed necessary for the revised claims should be deducted from Peregrine Pharmaceuticals, Inc. Deposit Account No. 50-3493/4001.002299.

Claim 4 has been amended to recite that the first antibody, or antigen-binding fragment thereof, targets and binds to "an aminophospholipid of" an aminophospholipid-protein complex. These embodiments are supported in the original and parent specifications, *e.g.*, in the present specification at least at pages 2 and 6-16, particularly at page 2, line 15; page 4, line 30; page 5,

lines 10 and 17; page 6, line 30; page 7, lines 1-30; page 8, lines 2 and 3; page 16, line 15; and at page 21, lines 1, 2, 5, 12, 13 and 15 (see also, fourth Action at page 8).

Claims 5, 6 and 24 have been amended to refer to the phosphatidylethanolamine, phosphatidylserine and aminophospholipid of the aminophospholipid-protein complexes, respectively, which are consistent with claim 4 and supported by the specification as exemplified above.

Claim 55, which depends from claim 73, has been amended to recite the simultaneous or sequential administration of at least a second therapeutic agent, as supported by the original and parent specifications and the pending independent claims, as exemplified by original claim 4.

Claim 56, which depends from claim 73, has been amended to recite that the first antibody, or antigen-binding fragment thereof, binds to phosphatidylethanolamine of a phosphatidylethanolamine-protein complex, which is consistent with claim 73 and supported by the specification as exemplified above for claim 4.

Claim 59, which depends from claim 73, has been amended to recite that the first antibody, or antigen-binding fragment thereof, binds to phosphatidylserine of a phosphatidylserine-protein complex, which is consistent with claim 73 and supported by the specification as exemplified above for claim 4.

Claim 60 further limits claim 59 by reciting that the first antibody, or antigen-binding fragment thereof, binds to phosphatidylserine of a phosphatidylserine and β_2-glycoprotein I complex, which is supported by the specification as set forth above for claim 4, with particular reference to page 7, lines 28 and 29.

Claims 68, 70, 71 and 72 have been amended to refer to the phosphatidylserine and aminophospholipid of the aminophospholipid-protein complexes, respectively, which are consistent with claim 4 and supported by the specification as exemplified above.

Claim 73 was previously the only independent claim that maintained H_2O_2, thrombin and calcium flux inducing agents. As removing each of these components from claim 73 would make claim 73 a duplicate of claim 4, claim 73 has instead been amended remove all references to a second therapeutic agent. Claim 73 thus reflects the monotherapy first claimed in the parent application, now U.S. Patent No. 6,406,693 ("the '693 patent"; Attorney Docket No. 4001.002200), but where the antibody, or antigen-binding fragment thereof, binds to an aminophospholipid of an aminophospholipid-protein complex. Dependent claim 55 in the present case returns to the simultaneous or sequential administration of at least a second therapeutic agent. As shown by the obviousness-type double patenting rejection entered in the first Action in the present application, and the Terminal Disclaimer of record, the presently claimed monotherapy and combination therapies are not patentably distinct, so entry of the current amendment to claim 73 is therefore proper.

Claims 74-81 and 84 have been amended to refer to the phosphatidylserine and aminophospholipid of the aminophospholipid-protein complexes, respectively, which are consistent with claim 4 and supported by the specification as exemplified above.

Claim 85, which depends from claim 73, has been amended to recite that the first antibody is a monoclonal, human, humanized, part-human chimeric or trimeric anti-aminophospholipid antibody or an antigen-binding fragment thereof. This is supported by the original and parent specifications and the pending dependent claims, as exemplified by claims 4, 83, 9 and 23.

Claim 87 has been amended to correct an oversight in drafting and to replace phosphatidylethanolamine with phosphatidylserine, such that claim 87 is no longer a duplicate of claim 86.

Finally, claim 88 has been amended to refer to the aminophospholipid of the aminophospholipid-protein complex, which is consistent with claim 4 and supported by the specification as exemplified above.

It will therefore be understood that no new matter is included within any of the amended or new claims.

VI. Written Description Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 4-9, 23-27, 41, 53, 57, 59-64, 66-76, 78-80 and 82-88 are rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement in regard to the calcium flux inducing agents. Although Applicants respectfully traverse, the Action's concerns are overcome.

It appears that this rejection may also have been intended to apply to H_2O_2 and thrombin (fourth Action at page 3). However, dependent claims 55 and 56, which were the only dependent claims reciting H_2O_2 and thrombin, are not subject to this ground of rejection. Nonetheless, H_2O_2 and thrombin are not recited in any pending claims.

As evident in the fourth Action, and documented in Applicants' interview summaries of December 12, 2006, the present rejection is repeated from the third Action at pages 3-6. However this rejection is no longer germane to most claims because calcium flux inducing agents were deleted from all but claims 73, 59, 60 and 85 in Applicants' third response. Therefore, most examined claims are completely free from this ground of rejection.

The last part of the written description rejection in the fourth Action appears to attempt to encompass inflammatory cytokines and compounds that interfere with tubulin activity in the rejection (fourth Action at page 7). However, to the extent that this was intended, it would be a new ground of rejection not necessitated by Applicants' amendment or untimely submission of references, and would thus render finality improper. As finality has been indicated, Applicants

therefore need only to respond to the original rejection as applied to calcium flux inducing agents, and not to any inferential and new rejection as applied to inflammatory cytokines and compounds that interfere with tubulin activity.

Most examined claims were earlier amended to remove reference to calcium flux inducing agents (and H_2O_2 and thrombin) and are thus already free from this ground of rejection. Presently, the last remaining claims reciting calcium flux inducing agents (and H_2O_2 and thrombin) have been amended to remove reference to theses agents.

Accordingly, and as agreed during the telephone interview, the outstanding § 112, first paragraph rejection is therefore overcome and should be withdrawn.

VII. Objection to Claim 88

Claim 88 is objected to as allegedly being of improper dependent form, for failing to further limit the subject matter of claim 82. Although Applicants respectfully traverse, the Action's concerns are overcome.

Following the issues of the restriction requirement raised in the fourth Action at page 2, the Action then found claim 88 to be broader than claim 82 by virtue of including antibodies that bind to the protein portion of the complex (fourth Action at pages 7-8). Such a concern no longer exists in the pending claims, as claim 82 recites binding to an aminophospholipid and claim 88 further limits claim 82 by specifying that the aminophospholipid is part of an aminophospholipid-protein complex.

Accordingly, and as agreed during the telephone interview, the objection is therefore overcome and should be withdrawn.

VIII. New Matter Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 4-6, 24-27, 41, 49-68, 70-81, 84, 85 and 88 are newly rejected under 35 U.S.C. § 112, first paragraph as allegedly constituting new matter. Although Applicants respectfully traverse, the Action's concerns are overcome.

The new matter rejection is also linked to the issues of the restriction requirement raised in the fourth Action at page 2. As documented in Applicants' interview summaries of December 12, 2006, agreement was reached during the recent interviews that the new matter rejection in the fourth Action, which applies only to the separately patentable invention, will be vacated/withdrawn.

Applicants have ensured that the present claims recite only the subject matter of the elected invention, which is not subject to this rejection. Applicants appreciate the suggested wording in the fourth Action at page 8, which has been utilized.

Accordingly, and as agreed during the telephone interview, the new matter rejection is therefore overcome and should be withdrawn.

IX. New Written Description Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 4-9, 23-27, 41, 49-68, 70-81, 83 and 88 are newly rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement in regard to aminophospholipid-protein complexes. Although Applicants respectfully traverse, the Action's concerns are overcome.

This written description rejection stems from the restriction requirement raised in the fourth Action at page 2. As documented in Applicants' interview summaries of December 12, 2006, agreement was reached during the recent interviews that this written description rejection, which applies only to the separately patentable invention, will be vacated/withdrawn.

Applicants have ensured that the present claims recite only the subject matter of the elected invention, which is not subject to this rejection. It is again noted that Applicants have utilized the wording suggested in the fourth Action at page 8.

Accordingly, and as agreed during the telephone interview, this written description rejection is therefore overcome and should be withdrawn.

X. Information Disclosure Statements

In reviewing the Information Disclosure Statements (IDSs) of record, it appears that the Form PTO-1449 listing references A1-A21, B1-B11, C1-C52, timely submitted when the present, continuation application was filed, has not been initialed by the Office and returned. Another copy of the Form PTO-1449 listing these references is presently enclosed, and Applicants respectfully request that the Office initial and return the enclosed Form PTO-1449 to confirm entry and consideration of the listed references.

In addition, the Form PTO-1449 listing references C56 and C57, timely submitted during early pendency of the present application, has not been initialed by the Office and returned. Applicants have not been able to locate a return postcard evidencing receipt of this IDS, Form PTO-1449 and references C56 and C57 at the Office. Therefore, and as a precaution, further copies of the Form PTO-1449 and the references themselves are presently enclosed, and Applicants respectfully request that the Office initial and return the enclosed Form PTO-1449 to confirm entry and consideration of references C56 and C57.

XI. Conclusions

This is a complete response to the referenced Action. In conclusion, as agreed during the telephone interviews and evidenced by the foregoing remarks, the present amendments are entitled to entry, all pending claims are drawn to a single invention and are in condition for allowance. A timely indication to this effect is therefore respectfully requested. Should

Examiner Fetterolf have any questions or comments, a telephone call to the undersigned Applicants' representative is earnestly solicited.

Respectfully submitted,

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